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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,154	09/29/2003	Felix A. Perriello	GLOB 63966	1902

7590 08/24/2005

Tara L. Pfaeffle  
Pietragallo, Bosick & Gordon  
One Oxford Centre  
301 Grant Street , 38th Floor  
Pittsburgh, PA 15219

EXAMINER

BARRY, CHESTER T

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,154

Applicant(s)

PERRIELLO, FELIX A.

Examiner

Chester T. Barry

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005. (ELECTION w/out TRAVERSE) CTR
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 15-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-14 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/20/05, 3/11/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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CTB APPLICANT'S ELECTION WITHOUT TRAVERSE IS NOTED.

Claims 1, 6 – 10, 12 - 14 are rejected under 35 USC Sec. 102(b) and under 35 USC Sec. 102(e) as anticipated by Teran.

USP 6395174 to Teran describes a method for treating agricultural wastes. The method includes mechanical aeration of agricultural waste with air. See col 6 line 50 – col 7 line 50. It is well known that air comprises methane. See "Components of Atmospheric Air" (CRC Handbook of Chemistry and Physics, 59<sup>th</sup> Edition, 1978, at page F-210). Accordingly, Teran inherently describes a method for treating agricultural wastes by introducing an alkane substrate, i.e., methane contained in atmospheric air, to agricultural waste. The recitation "to stimulate the growth of alkane-utilizing bacteria" goes to intend, not conduct or result, therefore this recitation is not limiting of the claimed invention. Accordingly, although the recitation "to stimulate the growth of alkane-utilizing bacteria" has (by the previous sentence) been considered, it is not given patentable weight. Moreover, even if that phrase were limiting of the claim, the examiner wishes to note that the phrase, "which at least partially digest the agricultural waste" is not limiting of the phrase, "alkane-utilizing bacteria." In contrast, the phrase, "that at least partially digest the agricultural waste," would limit the scope of "alkane-utilizing bacteria" to those alkane-utilizing bacteria that at least partially digest agricultural waste. See generally, Strunk and White, "The Elements of Style." It is too oft repeated that Applicant is his own lexicographer. In view of that maxim of patent application preparation and prosecution, the choice of "which" rather than "that" in the phrase "alkane-utilizing bacteria which at least partially digest the agricultural waste," is taken as an applicant admission that all alkane-utilizing bacteria at least partially digest agricultural waste. In short, given the claim construction discussion above, claim 1 is tantamount in coverage to, "a method comprising introducing an alkane substrate to agricultural waste." Accordingly, Teran anticipates claim 1. per claim 10, waste lagoons comprise waste solids and waste liquids. Hence, the waste is a waste slurry. Per claim 12, air comprises oxygen, as evidenced by CRC Handbook F-210. Per claim 14, Teran's lagoon is not enclosed or covered in a manner capable of preventing rainfall from entering the lagoon. Therefore, rainfall, a form of water, necessarily enters the lagoon.

USP 4334026 is cited but not applied for it is unclear whether all methane is separated from the ammonia stream leaving the gas separator prior to addition to the fermenter. See col 1 line 68, 3/64, 7/60.

Claims 1 – 2, 4 - 5, 10-11 are rejected under 35 USC Sec. 102(b) as anticipated by Barkley. US 5037551 to Barkley describes a method of treating wastewater comprising introducing natural gas (comprising methane, propane 3%, and butane 1%) into aqueous wastewater. The wastewater is pulp and paper mill waste. Insofar as paper is made from trees, pulp and paper mill wastewater is both an agricultural and industrial waste. See Fig. 2 (C<sub>1</sub> – C<sub>4</sub> alkane source 66); col 1 lines 6-10; col 3 lines 26 – 62; col 4 line 8, 40-64; col 6 lines 13-30; col 9 lines 1-5, 48-55, 60; col 10 lines 32-54.

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Claims 1, 5, 6 - 11 are rejected under 35 USC Sec. 102(b) as anticipated by Trost. USP 5651890 to Trost discloses that anaerobic digestion has been employed to treat wastewater containing agricultural residues and animal waste. Col 1 line 34. Trost describes further that such anaerobic digestion processes introduce methane and propane into the waste stream. Accordingly, Trost discloses a prior art method for treating agricultural waste, the method comprising introducing an alkane substrate, e.g., methane and propane, to agricultural waste. As noted above, the recitation in claim "to stimulate the growth of alkane-utilizing bacteria which at least partially digest the agricultural waste" constitutes a purpose or motivation behind doing the "alkane-introducing," but does not limit the claim. For example, claim 1 does not recite the step of adding alkane-utilizing bacteria to the waste stream, or the step of stimulating the growth of alkane-utilizing bacteria" or growing alkane-utilizing bacteria in the waste.<sup>1</sup>

Objection is made to Claim 3 for its dependence on a rejected base claim, but would be allowed if presented in independent form.

Objection is made to Figures 3 – 9 and 11 – 13. Color<sup>2</sup> photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

  
571-272-1150  
**CHESTERT. BARRY**  
**PRIMARY EXAMINER**

<sup>1</sup> No indication of allowable subject matter is expressed or implied by the foregoing remark.

<sup>2</sup> The examiner cannot determine from inspection of the Image File Wrapper whether color rather than B&W photographs were filed. If B&W photographs were filed, please state the same in your response to this Office action and disregard this objection.